

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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ALBA QUIÑONEZ FLORES,
Plaintiff,

AFFIDAVIT OF IRA J. KURZBAN

v.

**UNITED STATES OF AMERICA;
DOES 1-10**

Civil Action No. 14-CV-3166 (JBW) (RML)

Defendants.
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Affiant IRA J. KURZBAN states the following:

1. I am a partner of the law firm Kurzban, Kurzban, Weinger, Tetzeli & Pratt, P.A., which is located at 2650 S.W. 27th Avenue, Second Floor, Miami, FL 33133. I represent Plaintiff Alba Quiñonez Flores (“Ms. Quiñonez”) in the above-styled action along with my co-counsel Jennie Santos-Bourne (“Ms. Santos”) of Americans for Immigrant Justice.

2. On March 4, 2015 at 5:00 p.m., Ms. Santos and I appeared for a hearing telephonically before Magistrate Judge Robert M. Levy to address discovery disputes that had arisen in this case between Ms. Quiñonez and Defendant United States of America (“Defendant”). Assistant United States Attorney Margaret M. Kolbe (“Ms. Kolbe”) appeared personally before Judge Levy for the hearing.

3. Judge Levy issued a series of oral rulings during the hearing, two which are relevant to this Motion. First, Judge Levy ordered Defendant to produce all policies, procedures, regulations, guidelines, or contracts controlling the shelter conditions in effect at the time of Ms. Quiñonez’s detention. Second, Judge Levy ordered that Ms. Quiñonez be permitted to examine photographs of the Customs and Border Protection (“CBP”) agents on duty at the Falfurrias

Border Patrol Station while Ms. Quiñonez was detained there. Judge Levy ordered that the examination could be undertaken in the form of a “digital lineup” under controlled conditions and Defendant would be under no obligation to allow Ms. Quiñonez to retain any of the photographs. Judge Levy also ordered Ms. Quiñonez to attempt to narrow the pool of CBP agents by providing more detailed descriptions of the agents in question.

4. On March 13, 2015, I sent a letter to Ms. Kolbe requesting that she supplement her production by producing the applicable documents as ordered by Judge Levy and proposing April 16, 2015 as the date to examine the photographs in Court, at Ms. Kolbe’s office, or at another mutually agreeable location. *See* Exhibit A, March 13, 2015 Letter. The letter also contained descriptions of some CBP agents as well as individually naming 12 of them. *Id.* Ms. Kolbe responded with a letter sent on April 1, 2015. With regard to documents relevant to shelter conditions, Ms. Kolbe’s response merely referred Ms. Quiñonez to “those documents Defendant already has disclosed, identified and/or produced” *See* Exhibit B, April 1, 2015 Letter. With regard to the examination of CBP agent photographs, Ms. Kolbe stated that this was a “new demand” and that Defendant intended to “interpose written objections/responses to this demand on or before April 16” *Id.*, p. 2, n. 2.

5. I sent another letter to Ms. Kolbe on April 6, 2015 pointing out that Defendant’s responses failed to follow Judge Levy’s March 4 oral rulings and reaffirming that Ms. Quiñonez and her counsel are prepared to review the photographs on April 16. *See* Exhibit C, April 6, 2015 Letter. On April 7, 2015, Ms. Santos discussed these issues telephonically with Ms. Kolbe and none of the issues were resolved.

6. Judge Levy also issued a written Minute Order on March 10, 2015 permitting Ms. Quiñonez to depose the intake officer present when Ms. Quiñonez was detained and the agent in

charge of the Falfurrias Station during her detention. He did not authorize any other depositions. *See* Exhibit D, Minute Order. The depositions that were granted by the Court have been duly noticed. Even though the Order did not authorize any other depositions and specifically limited the number of depositions, Defendant noticed the deposition of Ms. Quiñonez on March 31, 2015 and upon information and belief served a subpoena ordering Mr. Wilfredo Sandoval Flores (“Mr. Sandoval”) to appear for a *duces tecum* deposition on April 28, 2013. Neither deposition is authorized by Judge Levy’s Order and Ms. Kolbe did not state her intention to depose any individuals during the March 4 hearing.

I AFFIRM under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated April 8, 2015

/s/ Ira J. Kurzban
Ira J. Kurzban
Kurzban, Kurzban, Weinger
Tetzeli & Pratt, P.A.
2650 S.W. 27th Ave.
Second Floor
Miami, Florida 33133
Phone: (305) 444-0060
Fax: (305) 444-3503
Email: ira@kkwtlaw.com